

Remarks

Introduction

Claims 2-4, 6-16, 18-25, and 28-33 were pending. By way of this response, claims 2-4, 6-16, 18-25, and 28-33 have been cancelled without prejudice, and claims 34-50 have been added. Support for new claims 34-50 can be found in the specification as originally filed, including the original claims.

Rejections Under 35 U.S.C. § 103

Claims 2-4, 6-16, 18-25, 28-29, and 31-33 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kennedy et al. (U.S. Patent No. 6,523,954; hereinafter Kennedy) in view of Peifer et al. (U.S. Patent No. 6,112,224; hereinafter Peifer), and further in view of Lloyd et al. (U.S. Patent No. 6,080,106; hereinafter Lloyd). Claims 2-4, 6-16, 18-25, 28-29, and 31-33 have also been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Peifer in view of Kennedy, and further in view of Lloyd.

As indicated herein, the previous claims have been cancelled, and claims 34-50 have been added. Applicant traverses the rejections as they relate to the present claims.

The present claims are directed to methods of conducting comprehensive eye examinations from a remote location. As understood by persons of ordinary skill in the art, and as is apparent from the specification of the present application, a comprehensive eye examination is an eye examination which permits a licensed eye care practitioner to provide a diagnosis and a prescription, if necessary. This is in contrast to an eye screening examination.

As understood by persons of ordinary skill in the art, eye screening examinations and comprehensive eye examinations are different and distinct, one from the other. For example, eye

screening exams provide instant results, such as photographs, of an eye to determine the presence of eye disorders. No physical contact is made with the patient in an eye screening exam, and no eye drops or medications are used. Thus, as understood by persons of ordinary skill in the art, eye screening exams only identify the presence of eye disorders and do not provide a diagnosis or prescription to correct an eye disorder. In short, an eye screening exam provides a yes/no type of answer (e.g., whether the patient has an eye disorder or not).

In contrast, a comprehensive eye examination includes an eye doctor or licensed eye care practitioner examining the inside of an eye to provide a diagnosis and prescription, if necessary. Frequently, if not always, a comprehensive eye exam includes administration of topical eye drops to dilate the pupil of the eye. A comprehensive eye examination can be understood to include an assessment of a patient's history, general medical observations, external and ophthalmoscopic examinations, visual acuity, ocular alignment and motility, refraction, and as appropriate, binocular vision or gross visual fields, performed by an optometrist or an ophthalmologist. Based on a comprehensive eye exam, the licensed eye care practitioner can provide a prescription to address an ophthalmic disorder or condition.

Applicant, in view of the above, for example, submits that a person of ordinary skill in the art clearly understands that eye screening exams and comprehensive eye exams are different and distinct one from the other.

Applicant submits that the combinations of references cited in the Office Action (Kennedy, Peifer, and Lloyd or Peifer, Kennedy, and Lloyd) fail to disclose, teach, or suggest all of the elements recited in the present claims. For example, the references, taken alone or in any combination, do not disclose,

teach, or even suggest a method of conducting a comprehensive eye examination, as recited in the present claims. In addition, the combinations of references do not disclose, teach, or even suggest an eye examination process that comprises providing a diagnosis and prescription, as recited in the present claims.

Applicant maintains and resubmits the earlier remarks regarding the cited references.

In addition, applicant submits that Kennedy discloses a system and method for an eye screening examination (see at least the Title; Abstract; column 2, lines 47-49; column 2, line 66 to column 3, line 2; and column 4, lines 15-22). Thus, the system and method disclosed by Kennedy is expressly limited to eye screening exams, or exams that only determine the presence of an eye disorder. This is in direct contrast to the methods recited in the present claims, which are directed to comprehensive eye exams that comprise providing a diagnosis and prescription.

As discussed herein, it is well recognized that eye screening exams, and eye screening exam systems and methods, such as the systems and methods disclosed by Kennedy, are different and distinct from comprehensive eye examination systems and methods, as recited in the present claims. Thus, applicant submits that Kennedy is directed to an entirely different and distinct problem than that addressed by the presently claimed invention in the present application.

Peifer discloses a patient monitoring system for use in telemedicine. The monitoring system disclosed by Peifer includes non-ophthalmic medical devices (column 4, lines 34-38). Importantly, the monitoring stations only permit a health care professional to receive or obtain information from the patient (column 3, lines 45-47). In short, Peifer discloses a system in which a health care professional can monitor a patient using non-ophthalmic medical devices without being able to direct an

eye examination and analyze information from the eye examination. Furthermore, Peifer does not disclose, teach, or even suggest any method whatsoever, let alone a method of conducting a comprehensive eye examination, that comprises providing a diagnosis and prescription, as recited in the present claims. Peifer does not even include the word prescription anywhere in the patent.

Lloyd discloses a non-ophthalmic patient monitoring system (column 1, line 5). The system collects and transfers data from a patient to a remote monitoring system (column 2, lines 56-57). As specifically shown in FIG. 1, the remote monitoring system is used by a monitoring staff (70), which is specifically illustrated as a cardiac nurse. As understood by persons of ordinary skill in the art, nurses cannot provide medical diagnoses or prescriptions to patients.

Importantly, Lloyd does not disclose, teach, or even suggest a method of conducting a comprehensive eye examination, as recited in the present claims. In addition, Lloyd does not disclose, teach, or even suggest any method whatsoever, let alone a method of conducting a comprehensive eye examination, that comprises providing a diagnosis and prescription, as recited in the present claims. Lloyd does not even include the word prescription anywhere in the patent.

Applicant submits that the combinations of Kennedy, Peifer, and Lloyd, do not disclose, teach, or even suggest all of the elements recited in the present claims. For example, the combinations of references do not disclose, teach, or even suggest any method that comprises providing a diagnosis and prescription, as recited in the present claims.

As discussed herein, Kennedy is expressly directed to an eye screening exam which, as understood by persons of ordinary skill in the art, and as disclosed by Kennedy, does not include

providing a prescription for an eye disorder. Each of Peifer and Lloyd fail to provide the deficiencies apparent in Kennedy. Therefore, since each of the references fails to disclose, teach, or even suggest providing a diagnosis and prescription, the combinations of the references fail to disclose, teach, or even suggest all of the elements recited in the present claims.

Moreover, applicant submits that a person of ordinary skill in the art would not be motivated to combine the deficient teachings of the references, let alone do so and obtain the presently claimed methods. For example, the references are directed to non-analogous arts, and are directed to solving different and distinct problems. In addition, the references are directed to different and distinct problems from those addressed by the present invention.

For example, Kennedy is directed to a system and method for conducting an eye screening exam. As discussed herein, eye screening exams and comprehensive eye examinations are different and distinct, one from the other. Peifer and Lloyd are both directed to non-ophthalmic patient monitoring systems. Thus, applicant submits that a person of ordinary skill in the art attempting to provide a comprehensive eye examination would not be motivated to combine the different and distinct teachings of Kennedy for an eye screening exam with the teachings of Peifer and Lloyd for non-ophthalmic patient monitoring systems and methods.

Moreover, even if the deficient teachings of Kennedy, Peifer, and Lloyd could be erroneously combined, the combinations fail to disclose, teach, or even suggest all of the limitations of the present claims. For example, as discussed above, the combinations of Kennedy, Peifer, and Lloyd fail to disclose, teach, or even suggest any method, let alone a method of conducting a comprehensive eye examination, that comprises

providing a diagnosis and a prescription, as recited in the present claims. Thus, applicant submits that the combinations of Kennedy, Peifer, and Lloyd do not disclose, teach, or even suggest all of the elements of the present claims.

In addition, each of the present dependent claims is separately patentable over the prior art. For example, none of the prior art disclose, teach, or even suggest the present methods including the additional feature or features recited in any of the present dependent claims. Therefore, applicant submits that each of the present claims is separately patentable over the prior art.

In view of the above, applicant submits that the present claims, that is claims 34-50, are unobvious from and patentable over Kennedy, Peifer, and Lloyd, taken alone or in any combination, under 35 U.S.C. § 103.

Conclusion

In conclusion, applicant has shown that the present claims are unobvious from and patentable over the prior art under 35 U.S.C. § 103. Therefore, applicant submits that the present claims, that is claims 34-50, are allowable. Therefore, applicant respectfully requests the Examiner to pass the above-identified application to issuance at an early date. Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Date: 1/27/06

Respectfully submitted,



Frank J. Oxa  
Attorney for Applicant  
Registration No. 25,612  
4 Venture, Suite 300  
Irvine, California 92618  
(949) 450-1750  
(949) 450-1764 Facsimile